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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 13th January 2015

No. 359—IR(ID)-7/2013-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th November 2014 in Industrial Dispute Case No. 38 of 2013 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the District Transport Manager, O.S.R.T.C., Cuttack and its Workman Shri Prasanta Kumar Kanungo was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 38 OF 2013

Dated the 29th November 2014

Present :

Shri Saroj Kumar Sahoo, o.s.j.s. (Jr. Branch),
Presiding Officer, Labour Court, Bhubaneswar.

Between :

The Management of . . . First Party—Management
The District Transport Manager,
O.S.R.T.C., Cuttack, Badambadi, Cuttack.

And

Its Workman . . . Second Party—Workman
Shri Prasanta Kumar Kanungo,
At Arunodaya market (Bhanja Lane),
P. O. Badambadi, Cuttack - 753 012.

Appearances :

Shri G. P. Jena, Autho. Rept. . . For the First Party—Management

Shri S. K. Dash, Advocate and Shri T. Lenka, Advocate . . . For the Second Party—Workman

AWARD

The Government of Odisha in the Labour & E.S.I. Department, in exercise of powers conferred upon it by sub-section (5) of Section 12 read with Clause (c) of Section 10 of the Industrial Disputes Act, 1947 (for short, the 'Act'), have referred the following issues for adjudication by this Court vide their Letter No. 6362—IR(ID)-7/2013-LESI., dated the 9th July 2013 :—

"Whether the termination of service of Prasanta Kumar Kanungo, contingent menial by way of refusal of employment with effect from the 29th February 1994 by the management of District Transport Manager (Admn.) M/s OSRTC, Cuttack is legal and/or justified ? If not, what relief the workman is entitled to ?".

2. The case of the second party workman as per his statement of claim is that he joined in his service under the first party management on the 1st June 1992 as a Contingent Menial and continued till the 28th February 1994. He performed his duty to the best satisfaction of the management. All of a sudden on the 29th February 1994 the first party management illegally terminated his service. Chandramani Pradhan another workman who is junior to the second party is continuing in service. Due to such illegal termination the second party had raised an Industrial Dispute before D. L. O., Cuttack on the 26th April 1995. The second party was getting Rs. 750 towards his wages per month. The first party management did not take any step for reinstatement of the second party inspite of his several approach. The termination of the second party was illegal and in violation of Section 25-F of Industrial Disputes Act, 1947. The second party be reinstated in service with full back wages, un paid wages, continuity of service along with other service benefits.

3. The first party management has filed its written statement. The case of the management is that the present petition/claim filed by the second party is not maintainable in fact or in law. There is no cause of action for filing of this case. The case is barred by Law of limitation. The petition filed by the second party contents fabricated and wrong story. This is a case of 20 (twenty) year old for which this is also not maintainable. As per records the second party was a Contingent Menial who was working on the days of requirement and getting his salary for the days he worked. There is no post, no scale of pay or no work, for which he was not engaged further. Mere continuance of the second party from June, 1992 to February, 1994 on the days of availability of work can not create any right in favour of the second party. All the engagement of temporary nature have been stopped after the 1st June 1996. As there was no work for Contingent worker, the claim of the second party for his reinstatement in service is not acceptable. Non-availability of work is not retrenchment as per the Industrial Disputes Act. The second party workman is not entitled to the relief claimed.

4. Taking into the consideration the pleading of the parties the following issues are settled :—

ISSUES

- (i) Whether the termination of service of Prasanta Kumar Kanungo, Contingent menial by way of refusal of employment with effect from the 29th February 1994 by the management of District Transport Manager (Admn.) M/s OSRTC, Cuttack is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?

5. The second party workman is examined as W. W. 1 and Exts. 1 to 5 are marked. Ext. 1 is the photo copy of the proceedings of the Divisional Selection Committee which was held on the 23rd March 1995. Exts 2, 2/a and 2/b are the photo copies of the representations filed by the second party. Exts. 3, 3/a, 3/b and 3/c are the letters issued by A. L. O., Cuttack to the D. T. M. (A), O.S.R.T.C., Cuttack Exts. 4 is the conciliation notice issued by Conciliation Officer-cum-A. L. O., Cuttack. Ext. 5 is the original of Ext. 1. On the other hand the D. T. M. (A), O.S.R.T.C., Cuttack is examined as M. W. 1 on behalf of the first party management and Exts. A to L are marked which are photo copies of pay bills relating to the Menial Staffs working under the management.

FINDINGS

6. *Issue No. (i)*—Under this issue it is to be decided whether the termination of service of Shri Prasanta Kumar Kanungo, Contingent Menial by way of refusal of employment with effect from the 29th February 1994 by the management of D.T.M.(Admn.), M/s O.S.R.T.C. is legal and/or justified. The second party workman who has been examined as W. W. 1 in his evidence deposed that he joined under the first party management as a Contingent Menial on the 1st June 1992 and performed his duties to the best satisfaction of the first party management till the 28th February 1994. He further deposed that the first party management illegally terminated his service with effect from the 29th February 1994 although Shri Chandramani Pradhan who is junior to him is continuing in service. There is no clear admission in the written statement filed by the first party management regarding the period of engagement of the second party under the first party. However in his evidence M. W. 1 admitted that the second party was engaged in the month of June, 1992 and continued till February, 1994 except the month of January, 1993. It is also admitted by him that the second party was getting Rs. 700 to 750 per month. At paragraph - 7 of his affidavit evidence he further deposed that the second party was not engaged after February, 1994 due to non availability of work. M. W. 1 produced and proved the photo copies of pay bills of contingent menials which are marked Ext. A to L on behalf of the management. From Ext. A, B, C and D it appears that in the month of July, August, September and October, 1993 the second party worked for 30 days in each month. It further transpires from Ext. E and F that the second party worked for 29 days each in the month of April and May, 1993. However inspite of direction given to the first party management it failed to file the pay bills of the Contingent Menials for the month of March, June, November, December, 1993 and January and February, 1994. No doubt the initial onus is on the workman to prove that he worked under the first party management for 240 days within a period of 12 months preceding to his termination. Admittedly the second party was working under the first party on daily wage basis of Rs. 25 per day. It is also admitted that there is no appointment letter, no document regarding receipt of wages and termination, in the case of a daily wage earner. It is also admitted that the management is in custody of all the relevant documents relating to the engagement of a daily wage earner. In this case the first party management failed to produce all the relevant documents relating to the engagement of the second party workman which are in its possession. Due to non production of material documents by the first party management an adverse inference is taken against the first party management (AIR2010 SC 1236 Director, Fisheries Terminal Division Vs. Bhiku Bhai Meghaji Bhai Chavda). However in his affidavit evidence M. W. 1 admitted that the second party was engaged under the first party management in the month of June, 1992 and continued till February, 1994, except January, 1993. So from the evidence from record it is clear that the second party was engaged on daily wage basis by the first party

management for more than 240 days within a period of twelve month preceding to his termination on the 29th February, 1994. As the second party workman has worked for more than 240 days with in a period 12 months preceding to his termination the first party management was obliged to comply the conditions precedent to retrenchment of the workman as provided under Section 25-F of I. D. Act, 1947. During his cross-examination M. W. 1 admitted that he can not say whether any notice was issued to the second party prior to his disengagement. He also denied about his knowledge regarding payment of compensation to the second party. Absolutely there is no evidence on record that notice was issued to the second party workman prior to his termination. There is also no evidence regarding payment of notice pay and compensation to the second party by the first party management. Hence the termination of the second party workman by the first party management with effect from the 29th February, 1994 is not legal or justified (AIR 2010 SC 1236 Director, Fisheries Terminal Division Vrs. Bhiku Bhai Meghaji Bhai Chavda, 2010(1) SCR 591 Harjinder Singh Vrs. Punjab State Ware Housing Corporation). This issue is answered accordingly against the first party management.

7. *Issue No. (ii)*—In his statement of claim at paragraph - 3 the second party workman has specifically mentioned that one Shri Chandramani Pradhan is continuing in service who is junior to him although he has been terminated by the first party management with effect from the 29th February, 1994. In its written statement filed by the management there is no denial of continuity of service of Shri Chandramani Pradhan who is junior in service to the second party. At paragraph - 7 of his evidence M. W. 1 deposed that no seniority can be determined among the daily wages since work depends upon the requirement and necessity of the work. On the other hand M. W. 1 is silent regarding the continuity of service of Chandramani Pradhan. Ext. 5 is the proceeding of the Divisional Selection Committee held on the 23rd March 1995 in the office of the Divisional Manager, O.S.R.T.C., Bhubaneswar for selection of candidates to regularise there services in the rank of Class - IV post in respect of Cuttack Zone. During his cross examination M. W. 1 admitted that there was a proceeding by the divisional Selection Committee who prepared a merit list of 25 candidates for regularisation of their service in the rank of Class - IV Posts. He also admitted that Ext. 5 is the proceeding of the said Divisional Selection Committee. On perusal of Ext. 5 it appears that the name of the present workman is at Serial Number 19. However the name of Chandramani Pradhan is not finds place in the merit list of the candidate which has been prepared by the Divisional Selection committee. So it is clear from the evidence on record that one Chandramani Pradhan who is junior to the second party workman is continuing in service although the second party was terminated. In its written statement at paragraph - 8 the first party management has mentioned that due to no work for the contingent menial their engagement has been stopped after the 1st June 1996. Admittedly the second party workman has been terminated on the 29th February 1994, which is much prior to the order stopping the engagement of Contingent Menial. From the evidence on record it is crystal clear that Chandramani Pradhan who is junior in service to the second party workman has been retained in service at the time of termination of the second party workman. Under Section 25-G of the Industrial Disputes Act, 1947 provides the procedure for retrenchment of a workman in an Industrial Establishment. In view of such provision, in absence of any agreement between the employer and the workman, the employer shall ordinarily retrench the workman who was the last person to be employed in that category unless for reasons to be recorded the employer retrenches any other workman. In the case in hand the first party management has not shown any reason for retrenchment of the second party workman. The first party management has violated the provisions of Section 25-G of I. D. Act. (AIR 2010 SC 1236 Director, Fisheries

Division Vrs. Bhiku Bhai Meghaji Bhai Chavda, 2010(1) SCR 591 Harjinder Singh Vrs. Pubjan State Ware Housing Corporation. As the termination of the second party workman by the first party management with effect from the 29th February, 1994 is illegal, the second party is entitled for reinstatement in service. There is no evidence that the workman has been gain fully employed from the refusal of service till the present Award. The second party has not contributed anything to the first party management during the last 20 years. The economic condition of the first party organisation is also not sound as it appears from the evidence of W. M. 1 who admitted that now the number of bus under the management is less than the bus plying in the year, 1992. In view of such facts the second party workman is entitled for 50% of his back wages. The first party management raised an objection on the ground of limitation. This is a case on reference from the appropriate Government. From Ext. 2 and 3 series it is clear that soon after his termination the second party workman had approached the Labour Machinery against his illegal termination. The delay is caused due to the Government Machinery and not due to latches on the part of the second party workman. However, limitation Act is not applicable to the Industrial Dispute Act, 1947 (Manu/OR/0215/2010 Divisional Manager, Boudh commercial Division OFDC Ltd. Vrs. Godabarish Badajena and another).

8. Hence the termination of service of Shri Prasanta Kumar Kanungo, Contingent Menial by way of refusal of employment with effect from the 29th February 1994 by the management of District Transport Manager (Administration), M/s O.S.R.T.C., Cuttack is not legal nor justified. The second party workman is entitled for reinstatement in service with 50% of back wages along with all the service benefits. The first party management is directed to execute the Award within one month of publication of the Award in the official gazette failing which the first party management is liable to pay interest @ 15% per annum on the money due to the second party workman.

The reference is disposed of accordingly.

Dictated and corrected by me.

S. K. SAHOO

29-11-2014

Presiding Officer

Labour Court, Bhubaneswar

S. K. SAHOO

29-11-2014

Presiding Officer

Labour Court, Bhubaneswar

By order of the Governor

M. NAYAK

Under-Secretary to Government